

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

1207.01A

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Signature _____

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name _____

Application Number

10/675,515

Filed

September 30, 2003

First Named Inventor

Jacqueline Buskop

Art Unit

3677

Examiner

REESE, David C.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/WBUSKOP/

Signature

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Wendy Buskop

Typed or printed name

☒ attorney or agent of record.
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☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

April 16, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ *Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jacqueline Buskop

Confirmation Number: 6098

Serial Number: 10/675,515

Examiner: REESE, David C.

Filed: September 30, 2003

Group Art Unit: 3677

**Entitled: ADVERTISING DEVICE FOR
PRODUCE AND CANDY VENDORS**

Attorney Docket Number: 1207.01A

MAIL STOP AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

REASONS UPON WHICH REVIEW IS REQUESTED

Applicant has filed a notice of appeal and is requesting pre-appeal brief review. Applicant believes that the 35 USC §112 rejection of Claim 1, and the 35 USC §103(a) rejection of Claim 1 over *Westmoland* (US 5,201,578) in view of *Bradley* (US 2,180,726) and further in view of case law is improper for the reasons stated below.

Applicant further believes that the 35 USC §112 rejection of Claim 8 and the 35 USC §103(a) rejection of Claim 8 over *Westmoland* (US 5,201,578) in view of *Bradley* (US 2,180,726) in view of *Johnson* (US 6,619,816) and in even further view of case law is improper for the reasons stated below.

Applicant's Claim 1 teaches an advertising apparatus for produce vendors consisting of at least one earring clip for engaging a non-pierced ear (Applicant's Paragraph [00011] and Figures 1 and 2); at least one line axially secured to the earring clip (Applicant's Paragraph [00018] and Figure 3); and a first hook and a second hook axially secured to the line and axially aligned with each other. (Applicant's Paragraphs [00011] and [00012] and Figure 3)

Each hook has at least two prongs for engaging two or more edible food items. (Applicant's Paragraph [00014] and Figure 2) Each edible food item is removably secured to a hook by partially penetrating the food item. (Applicant's Paragraphs [00015] and [00016] and Figure 2) The edible food items consist of fruits, vegetables, or combinations of these items. (Applicant's Paragraph [00015])

An automatic LED is disposed on the earring clip for lighting the edible food items. (Applicant's Paragraph [00013] and Figure 2). The automatic LED is electrically insulated from the earring clip (Applicant's Paragraph [00013] and Figure 2 – See discussion below). The automatic LED is a blinking light that can be actuated by a switch secured to the earring clip. (Applicant's Paragraph [00013] and Figure 2)

Applicant's Claim 8 teaches substantially identical limitations, save for teaching that the edible food items consist of chewy candy items. (Applicant's Paragraph [00017])

Applicant filed an amendment and response on October 19, 2007. The amendment added to both Claim 1 and Claim 8 the recitation: "wherein the automatic LED is electrically insulated from the at least one earring clip."

The Office Action, mailed January 16, 2008, rejected this recitation under 35 USC §112, first paragraph, as new matter.

Applicant's Figure 2 depicts a LED light 16 that is secured to an earring clip 10 for engaging a non-pierced ear. The earring clip 10, hooks 12 and 15, prongs 22 and 24, and edible items 14, 14a, and 14b, as shown, do not form a complete circuit capable of conducting power to the LED light 16. (Applicant's Paragraph [00013] and Figure 2)

Therefore, the LED light 16 must inherently include circuitry and a power source that is insulated from the earring clip 10. Without such electrical insulation, the LED light 16 would be unable to operate as intended.

Applicant believes that one skilled in the relevant art would reasonably construe,

from Figure 2 and the disclosure of Paragraph [00013], that the LED light must be electrically insulated from the earring clip 10.

Applicant's use of an electrically insulated LED light was proposed in contrast to the article described by *Westmoland*, in which "the entire ornamental structure of the jewelry forms the electrical contacts for connection to a battery." (*Westmoland*, Column 1, Lines 63-65) The structure of Applicant's advertising apparatus (the earring clip, line, and hooks) does not contact a power source or conduct power from a power source, and is therefore electrically insulated from the LED light.

As such, Applicant believes that the rejection under 35 USC §112, first paragraph, of Claim 1 should be withdrawn.

Applicant further believes that the rejection under 35 USC §112, first paragraph, of Claim 8 should be withdrawn.

Westmoland describes lighted or illuminated jewelry, in which the jewelry item itself is part of an electrical circuit. (*Westmoland*, Column 1, Lines 5-8) A lighting element having electrically conductive leads is connected to the jewelry body, which includes plate members spaced apart with electrically conductive means, and a battery is sized to fit between the plate members. (*Westmoland*, Column 1, Lines 30-43) The assembly of the jewelry completes an electrical circuit. (*Westmoland*, Column 1, Lines 43-48) The plates of the jewelry body are formed from an electrically conductive material to which a battery and lighting elements are directly attached. (*Westmoland*, Column 3, Lines 27-35)

Westmoland fails to teach use of multiple, axially aligned hooks, each having multiple prongs, and each secured axially to a line, to removably secure edible food items by partially penetrating the items.

Westmoland further fails to teach use of an automatic LED that is electrically insulated from the earring clip.

Bradley describes an article of jewelry that includes one or more gripping or piercing elements mounted on a supporting element, for receiving flowers or vegetables. (*Bradley*, Column 1, Lines 20-30) A clip 11 is shown secured to a link of chain 10 via an aperture 14 in a bifurcated element 15. (*Bradley*, Column 2, Lines 27-32)

Two jaws 16 and 17, each formed from a wing 18 attached to a U-shaped pin 22, pivot about a pin 21, such that piercing points 22a can be manually opened, then allowed to close using a coiled spring 23, to retain items between the two jaws, similar to a pair of tongs. (*Bradley*, Column 2, Lines 32-51 and Figures 2 and 3)

Bradley fails to teach hooks that are axially secured to a line, instead describing and depicting a clip 11 attached perpendicularly to a chain 10.

Bradley fails to teach hooks that are axially aligned with each other, instead describing jaws that face in opposition, operating in the manner of a pair of tongs to secure objects between piercing points.

Additionally, *Bradley* fails to teach hooks that have at least a first prong and a second prong for securing multiple items simultaneously, instead describing that each jaw has a single U-shaped pin with a single piercing point.

Bradley further fails to teach use of an automatic LED light to illuminate secured items, wherein the automatic LED light is electrically insulated from the earring clip.

Johnson describes a confection assembly having a light device, a light transmission element attached to the light device, and an edible confection attached to the light transmission element. (*Johnson*, Column 2, Lines 18-20) The light transmission element 14 is depicted as a tubular member for fitting over a light device 16. (*Johnson*, Column 3, Lines 47-52) Light passes from the light device through the light transmission element into the confection, illuminating the confection from within. (*Johnson*, Column 2, Lines 20-14)

Johnson fails to teach use of multiple hooks axially secured to a line, and axially aligned with each other, each having at least a first prong and a second prong for engaging at least two different chewy candy items simultaneously.

Johnson does not teach piercing the confection with one or more hooks to removably secure the confection, but instead teaches a mounting hole 26 at the bottom of the confection for permitting the insertion of the light transmission element 14. (*Johnson*, Column 4, Lines 34-38)

Further, *Johnson* describes an illuminated novelty confection that illuminates a confection from within, the confection having an interior portion that is adapted and constructed to receive light. (*Johnson*, Claim 1 and Column 2, Lines 20-23)

Applicant's advertising apparatus teaches external illumination of edible food items and chewy candy items performed by removably securing the items to one or more hooks by at least partially piercing the items.

Applicant believes that Claim 1 is patentable over *Westmoland* in view of *Bradley* and case law and is in condition for allowance. Such allowance is respectfully requested.

Applicant believes that Claim 8 is patentable over *Westmoland* in view of *Bradley, Johnson*, and case law and is in condition for allowance. Such allowance is respectfully requested.

Reconsideration of this application in light of the above arguments is respectfully requested.

Respectfully submitted,



Date: April 14, 2008

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